Case 6:19-cv-00643 Document 3 Filed 10/15/19 Page 1 of 7

UNITED STATES DISTRICT COURT OF TEXAS DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DISTRICT OF TE

2019 OCT 15 PM 2: 48

EN JULY CLERK W	
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Annette M. Aubrey
Plaintiff

3-19CV-2439N

Civil Action No.

v. Ward bw Claims

COMPLAINT

Charge of Discrimination of Disability Please see attached copies of Charge

Date

10/15/19, Detober 15, 2019

Signature

Print Name

Address

1241 Whis pering Trail

City, State, Zip

Dallas, TX 7534

Telephone

214530-7804

^{*} Attach additional pages as needed.

EEGC FORMS (1703)			
CHARGE OF DISCRIMINATION COMMISSION This form is affected by the Privacy Act of 1970 Act o	Presented To: A	gency(ies) Charge No(s):	
This form is affected by the Privacy Act of 1979. See encosed Brivacy Act OFFICE Statement and other Information before completing this form.	FEPA	•	
	EEOC	450-2017-03434	
ZUIT JUI 14 PM 1: 14 C		and EEOC	
		and LLOO	
Name (indicate Mr., Ms., Mrs.)	Home Phone (Incl. Area (Code) Date of Birth	
Annette M. Jackson-Aubrey	(214) 375-284	2 1966	
Street Address City, State and ZIP Code	<u> </u>		
1241 Whispering Trail, Dallas, TX 75241			
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or	State or Local Governmen	nt Agency That I Believe	
Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)	I	Dhana Na (Inglista Area Cada)	
Name	No. Employees, Members	Phone No. (Include Area Code)	
WARDLAW CLAIMS	201 - 500	(254) 644-6585	
Street Address City, State and ZIP Code			
7401 Cypress Gardens Blvd, Winter Haven, FL 33884			
N	No. Employees, Members	Phone No. (Include Area Code)	
Name	No. Employees, Wellie a	Thome No, intologo Finde Goddy	
Street Address City, State and ZIP Code	<u> </u>		
Street Address City, State and ZIP Code			
DISCRIMINATION BASED ON (Check appropriate box(es).)		IMINATION TOOK PLACE	
The state of the s	Earliest March 1, 2	Latest 2017 April 1, 2017	
RACE COLOR SEX RELIGION NATIONAL ORIG	·	2017 April 1, 2017	
RETALIATION AGE X DISABILITY GENETIC INFORMATION		- ANTINI ING ACTION	
OTHER (Specify)		CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): 1. PERSONAL HARM:			
1. PERSONAL HARM:			
a. On or about January 30, 2017, I was assigned to a one yea	r contract with St	ate Farm in Winter	
Haven Florida. In early March 2017 I took a couple of da	ays and went to D	allas for a doctor's	
appointment. I was required to return to Dallas for follo	w up appointmen	its later that month	
and I put in a request one week in advance to my HR re this leave approval until two hours before my departure	ip Crystai beil. I v	vas not notined of	
this leave approval until two hours before my departure	0 1		
b. During my leave I was called by coworkers and asked why I was not returning to Florida. This			
was a surprise to me because I planned to return on m	y scheduled retur	n date of April 5,	
2017. I contacted Crystal Bell who said that this was ju	st hearsay but St	ate Farm would not	
have reassigned my cases if they thought I was coming	g back.		
L NOTARY MA	necessary for State and Loc	al Agency Requirements	
will advise the agencies if I change my address or phone number and I will	i necessary for State and Loc	ai Agency Nequilaments	
cooperate fully with them in the processing of my charge in accordance with their	n that I have read the aha	ve charge and that it is true to	
I declare under penalty of perjury that the above is true and correct.	knowledge, information ar		
SIGNATURE OF	COMPLAINANT	M flila.	
/ / / / / / / / / / / / / / / / / / /	ettiluxe	y rugores	
1 1 () 1 1 1 1 1 2 1 2 1 1 1 1 1 1 1 1 1 1 1	ND SWORN TO BEFORE ME	ETHIS DATE	
- July 10, 2011	,		
Date Charging Party Signature / /			

EEOC Form 5 (11/09) CHARGE OF DISCRIMINATION Charge Presented To: Agency(ies) Charge No(ş): This form is affected by the Privacy Act of 1974. See enclosed Privacy Act **FEPA** Statement and other information before completing this form. **EEOC** 450-2017-03434 **Texas Workforce Commission Civil Rights Division** and EEOC State or local Agency, if any c. During my doctor's appointment on April 4, 2017, I was given a document from my doctor stating that I needed an accommodation of working from home. I was told by Crystal Bell that this was not an option. The Respondent did not participate in any interactive process to find me a position that would meet my requested accommodation. RESPONDENT'S REASON FOR ADVERSE ACTION: 2. a. No reason given. b. No reason given. c. Ms. Bell gave me several reasons including a laptop issue and finally just said that working from home was not an option. 3. DISCRIMINATION STATEMENT: I believe that I was discriminated against based on my disability, and/or because I was regarded as disabled, in violation of the Americans with Disabilities Act Amendments Act of 2008.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SUBNATURE OF COMPLANAIT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE

When necessary for State and Local Agency Requirements

NOTARY – When necessary for State and Local Agency Requirements

NOTARY – When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE

Jul 13, 2017

Charging Party Signatur

EEOC Form 161 (11/16)

Case 6:19-cv-00643 Document 3 Filed 10/15/19 Page 4 of 7 U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS							
1241	te M. Jackson-Aubrey Whispering Trail s, TX 75241	From:	Dallas District Office 207 S. Houston St. 3rd Floor Dallas, TX 75202				
	On behalf of person(s) aggrieved whos CONFIDENTIAL (29 CFR §1601.7(a))	e identity is					
EEOC Charge	e No. EEOC Representa	tive		Telephone No.			
	Patonia A. Rh	ule,					
450-2017-)3434 Investigator			(214) 253-2781			
THE EEO	IS CLOSING ITS FILE ON THIS CHARG	SE FOR THE FOLLO	WING REASON:				
	The facts alleged in the charge fail to state a	claim under any of the s	statutes enforced by the EE	OC.			
	Your allegations did not involve a disability as defined by the Americans With Disabilities Act.						
	The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.						
	Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge						
X	The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.						
	The EEOC has adopted the findings of the st	ate or local fair employr	ment practices agency that	investigated this charge.			
	Other (briefly state)						
- NOTICE OF SUIT RIGHTS - (See the additional information attached to this form.)							
Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)							
Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.							
		On behalf of the Com	mission	C .~ .0			

Enclosures(s)

Belinda F. McCallister, **District Director**

(Date Mailed)

CC:

John Ross, Attorney THOMPSON, COE, COUSINS 700 North Pearl Street, Suite 2500 Dallas, TX 75201 (Wardiaw Claims)

Enclosure with EEOC Form 161 (11/16)

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INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC

(This information relates to filing suit in Federal or State court <u>under Federal law.</u>

If you also plan to sue claiming violations of State law, please be aware that time limits and other provisions of State law may be shorter or more limited than those described below.)

PRIVATE SUIT RIGHTS

Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), or the Age Discrimination in Employment Act (ADEA):

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge <u>within 90 days</u> of the date you receive this Notice. Therefore, you should keep a record of this date. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed within 90 days of the date this Notice was mailed to you (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Courts often require that a copy of your charge must be attached to the complaint you file in court. If so, you should remove your birth date from the charge. Some courts will not accept your complaint where the charge includes a date of birth. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit before 7/1/10 – not 12/1/10 –- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do <u>not</u> relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, please make your review request within 6 months of this Notice. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.

NOTICE OF RIGHTS UNDER THE ADA AMENDMENTS ACT OF 2008 (ADAAA): The ADA was amended, effective January 1, 2009, to broaden the definitions of disability to make it easier for individuals to be covered under the ADA/ADAAA. A disability is still defined as (1) a physical or mental impairment that substantially limits one or more major life activities (actual disability); (2) a record of a substantially limiting impairment; or (3) being regarded as having a disability. However, these terms are redefined, and it is easier to be covered under the new law.

If you plan to retain an attorney to assist you with your ADA claim, we recommend that you share this information with your attorney and suggest that he or she consult the amended regulations and appendix, and other ADA related publications, available at http://www.eeoc.gov/laws/types/disability regulations.cfm.

"Actual" disability or a "record of" a disability (note: if you are pursuing a failure to accommodate claim you must meet the standards for either "actual" or "record of" a disability):

- > The limitations from the impairment no longer have to be severe or significant for the impairment to be considered substantially limiting.
- ➤ In addition to activities such as performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, thinking, concentrating, reading, bending, and communicating (more examples at 29 C.F.R. § 1630.2(i)), "major life activities" now include the operation of major bodily functions, such as: functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions; or the operation of an individual organ within a body system.
- > Only one major life activity need be substantially limited.
- With the exception of ordinary eyeglasses or contact lenses, the beneficial effects of "mitigating measures" (e.g., hearing aid, prosthesis, medication, therapy, behavioral modifications) are not considered in determining if the impairment substantially limits a major life activity.
- An impairment that is "episodic" (e.g., epilepsy, depression, multiple sclerosis) or "in remission" (e.g., cancer) is a disability if it would be substantially limiting when active.
- An impairment may be substantially limiting even though it lasts or is expected to last fewer than six months.

"Regarded as" coverage:

- An individual can meet the definition of disability if an employment action was taken because of an actual or perceived impairment (e.g., refusal to hire, demotion, placement on involuntary leave, termination, exclusion for failure to meet a qualification standard, harassment, or denial of any other term, condition, or privilege of employment).
- > "Regarded as" coverage under the ADAAA no longer requires that an impairment be substantially limiting, or that the employer perceives the impairment to be substantially limiting.
- The employer has a defense against a "regarded as" claim only when the impairment at issue is objectively BOTH transitory (lasting or expected to last six months or less) AND minor.
- A person is not able to bring a failure to accommodate claim if the individual is covered only under the "regarded as" definition of "disability."

Note: Although the amended ADA states that the definition of disability "shall be construed broadly" and "should not demand extensive analysis," some courts require specificity in the complaint explaining how an impairment substantially limits a major life activity or what facts indicate the challenged employment action was because of the impairment. Beyond the initial pleading stage, some courts will require specific evidence to establish disability. For more information, consult the amended regulations and appendix, as well as explanatory publications, available at http://www.eeoc.gov/laws/types/disability regulations.cfm.

JS 44 (Rev. 06/17) - TXND (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS			DEFENDANTS	3	
	XCEPT IN U.S. PLAINTIFF C	ar)	NOTE: IN LAND CO	of First Listed Defendant (IN U.S. FLAINTIF CASES) ONDEMNATION CASES, USE TO FLAND INVOLVED.	1 5 2019
•	3-1	9 C V - 2	2439N	CLERK IIS	DISTRICT
II. BASIS OF JURISD	ICTION (Place an "X" in C	One Box Only)	III. CITIZENSHIP OF P	NORTHE ON	DISTRICT OF TOUR
4 U.S. Government Plaintiff	☐ 3 Federal Question (U.S. Government	·	(For Diversity Cases Only) P	TF DEF 1	and One Box for Defendant) PTF DEF incipal Place
☐ 2 U.S. Government Defendant	☐ 4 Diversity (Indicate Citizens)	nip of Parties in Item III)	Citizen of Another State	2	
			Citizen or Subject of a Foreign Country	3	□ 6 □ 6
IV. NATURE OF SUIT		nly) DRTS	TORTEITURE/PENALITY	Click here for: Nature of BANKRUPTCY	of Suit Code Descriptions. OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers'	PERSONAL INJURY 365 Personal Injury - Product Liability 367 Health Care/ Pharmaceutical Personal Injury Product Liability	Y ☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antirust ☐ 430 Banks and Banking ☐ 450 Commerce
☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 755 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury	☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPER ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	TY LABOR 710 Fair Labor Standards Act 720 Labor/Management Relations 740 Railway Labor Act 751 Family and Medical	835 Patent - Abbreviated New Drug Application 840 Trademark SOCIAL SECURITY 861 HIA (1395ft) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g))	□ 460 Deportation □ 470 Racketeer Influenced and Corrupt Organizations □ 480 Consumer Credit □ 490 Cable/Sat TV □ 850 Securities/Commodities/ Exchange □ 890 Other Statutory Actions □ 891 Agricultural Acts □ 893 Environmental Matters
REAL PROPERTY 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land	Medical Malpractice CIVIL RIGHTS 440 Other Civil Rights 441 Voting 442 Employment 443 Housing/	PRISONER PETITION Habeas Corpus: ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence	☐ 791 Employee Retirement Income Security Act	FEDERAL TAX SUTTS □ 870 Taxes (U.S. Plaintiff or Defendant) □ 871 IRS—Third Party 26 USC 7609	□ 895 Freedom of Information Act □ 896 Arbitration □ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
☐ 245 Tort Product Liability ☐ 290 All Other Real Property	Accommodations 445 Amer. w/Disabilities - Employment 446 Amer. w/Disabilities - Other 448 Education	Other:	■ IMMIGRATION □ 462 Naturalization Application □ 465 Other Immigration Actions		☐ 950 Constitutionality of State Statutes
	moved from 3 te Court	Appellate Court	Reopened Anothe (specify)		
VI. CAUSE OF ACTIO			E filing (Do not cite jurisdictional state	utes unless diversity):	Balandischili
VII. REQUESTED IN COMPLAINT:	CHECK IF THIS UNDER RULE 2	IS A CLASS ACTION 3, F.R.Cv.P.	DEMAND \$, ,	if demanded in complaint: Yes □No
VIII. RELATED CASE IF ANY	E(S) (See instructions):	JUDGE		DOCKET NUMBER	
DATE		SIGNATURE OF ATTO	ORNEY OF RECORD		
FOR OFFICE USE ONLY RECEIPT # AM	10UNT	APPLYING IFP	JUDGE	MAG. JUD	GE